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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,942	06/15/2006	Daniel Soupe	062607	6543
38834	7590	11/03/2008	EXAMINER	
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP			FERGUSON, MICHAEL P	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,942	<b>Applicant(s)</b> SOUPE, DANIEL
	<b>Examiner</b> MICHAEL P. FERGUSON	<b>Art Unit</b> 3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 06 October 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-13 is/are pending in the application.

4a) Of the above claim(s) 5,6 and 9-11 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4,7,8,12 and 13 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/96/08)  
Paper No(s)/Mail Date 06/15/08.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Species 2, claims 1-4, 7, 8, 12 and 13, in the reply filed on October 6, 2008 is acknowledged.
2. Claims 5, 6 and 9-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 6, 2008.

***Claim Objections***

3. Claims 1-3, 8, 12 and 13 are objected to because of the following informalities:

Claim 1 (line 1) recites "vegetal hedge of the type incorporating". It should recite --vegetal hedge comprising--.

Claim 1 (line 3) recites "the area... wherein the branches of". It should recite --an area... wherein branches of--.

Claim 1 (line 5) recites "wherein it". It should recite --wherein the vegetal hedge--.

Claim 2 (line 2) recites "wherein it". It should recite --wherein the vegetal hedge--.

Claim 3 (line 2) recites "the thorny plants". It should recite --the plants--.

Claim 8 (line 3) recites "the latter". It should recite --the plants--.

Claim 12 (line 2) recites "wherein it consists in". It should recite --wherein the method consists of--.

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Claim 12 (line 3) recites "the area". It should recite --an area--.

Claim 12 (line 4) recites "then in linking". It should recite --then linking--.

Claim 12 (line 5) recites "said eventual framing". It should recite --said framing--.

Claim 13 (line 2) recites "of the latter". It should recite --of one of the branches--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 8, 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 8 and 12, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim 12 (line 4) recites "possibly incorporating framing elements therein". The phrase "possibly" renders the claim indefinite as it is unclear as to what is positively claimed as the invention.

Claim 13 (line 3) recites "after an eventual incision thereof". It is unclear as to what element is being incised or cut, and as to how such incision structurally cooperatively relates to the other elements of the vegetal hedge.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4, 7, 8, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Duvall (US 313,408).

As to claim 1, Duvall discloses a defensive anti-intrusion vegetal hedge comprising plants **A,C** having spines, wherein the plants are planted along a line defining an area to be protected, in one or two rows; wherein branches of the plants are linked to branches of neighboring plants by interweaving the branches and/or by binding the branches by the ends thereof; and wherein the vegetal hedge incorporates framing elements **B** having pointed and/or cutting parts (Figures 1-3, page 2 lines 15-24).

As to claim 2, Duvall discloses a defensive vegetal hedge, wherein vegetal hedge includes several rows of plants **A,C**, planted while maintaining a gap in staggered shifting between the rows (Figure 2, page 2 lines 15-24).

As to claim 3, Duvall discloses a defensive vegetal hedge wherein the plants **A,C** used consist of plants cultivated in clumps (Figure 1).

As to claim 4, Duvall discloses a defensive vegetal hedge wherein the branches of the plants **A,C** are linked and/or interwoven with the framing elements **B** (Figure 1).

As to claim 7, Duvall discloses a defensive vegetal hedge wherein the framing elements **B** consist of metallic elements (Figure 1).

As to claim 8, Duvall discloses a defensive vegetal hedge wherein the metallic elements **B** are in the form of barbed wire or concertina wire, arranged in spirals inserted between the plants or into the plants **A,C** (Figure 1).

As to claim 12, Duvall discloses a method for the production of a defensive anti-intrusion vegetal hedge wherein the method consists of planting plants **A,C** having spines along a line delimiting an area to be protected, in one or two rows, incorporating framing elements **B** therein, then linking the branches of the plants to branches of neighboring plants and/or to the framing elements, by means of weaving and/or binding (Figure 1, page 2 lines 15-24).

As to claim 13, Duvall discloses a method wherein, before the operation of binding and/or interweaving of the branches, at least a portion of one of the branches is bent in order to be oriented substantially horizontally (Figure 1).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The following patents show the state of the art with respect to vegetal hedges:

Terhune (US 524,032), Foor (US 579,477), Taylor (US 362,332), Young (US 275,317), Geiser (US 421,132), Landis (US 448,527), Harris, Jr. (US

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428,754) and Neiman (US 451,066) are cited for pertaining to vegetal hedges comprising plants and wire framing elements.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL P. FERGUSON whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (6:30am-3:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MPF  
10/29/08

/Michael P. Ferguson/  
Primary Examiner, Art Unit 3679